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ATTORNEYS FOR CARVANA, LLC.

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LUIS EDGAR MARTINEZ AND	§	CASE NO. 18-31586-HCM
REBECCA A. MARTINEZ	§	CHAPTER 13
DEBTORS,	§	
<hr/>		
CARVANA, LLC.	§	
CREDITOR,	§	
	§	
	§	

OBJECTION OF CARVANA, LLC TO DEBTOR'S MOTION TO IMPOSE
AUTOMATIC STAY AND REQUEST CONFIRMING NO STAY IN EFFECT.

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Carvana, LLC and files this objection to Debtors' Motion to Impose the Automatic Stay and for such objection would show unto this Court the following:

I.

FACTUAL BACKGROUND

1. On October 31, 2017, Debtor Luis Edgar Martinez borrowed \$33,838.49 from Carvana, LLC in connection with the purchase of a 2015 Lexus Is 350, Vin. JTHBE1D24F5022489. To secure said loan, Debtor gave Carvana, LLC a security interest in said vehicle.
2. On December 29, 2018, Debtor filed for bankruptcy relief in case number 17-32148-hcm. This case was dismissed with prejudice for 180 days on February 21, 2018.
3. On April 20, 2018 Debtors filed for bankruptcy relief in case number 18-30666. Carvana, LLC received no trustee disbursements and received only 3 direct contractual payments. This case was dismissed on August 13, 2018 as a result of the Debtor's failure to make trustee plan payments.

4. Prior cases 11-31497 dismissed for failure to make plan payment and 12-30057 converted from chapter 13 to chapter 7 and was discharged. Debtor have actively been under bankruptcy protection for over 7 years.
5. To date the balance due is \$34,492.72. The estimated NADA value for October 2018 is \$32,475.00; as such there is not equity in the vehicle.
6. Proposed chapter 13 plan lists three vehicles. The 2015 Lexus IS 350 purchased by Luis Edgar Martinez lists the vehicle as "Daughter's Car". As such the 2015 Lexus IS 350 is not necessary to the Debtor's reorganization.
7. Based upon the facts set forth above, no stay arose when this case was filed as to Luis Edgar Martinez pursuant to the provisions of 11 U.S.C 362c(4)(A)(i) as case numbers 17-32148 and 18-30666 were dismissed within one year from the date this case was filed.

II.

Based upon the facts set forth above, Carvana, LLC believes that DEBTORS have acted in bad faith in so far as the indebtedness owed to GFC. In In Re Alcydee Charles, 334 B.R. 207 BK S.D. Houston (11/30/05), Judge Isgur wrote a comprehensive analysis of the provisions of 11 U.S.C. Section 362C(3). On page 17 of the memorandum opinion (a copy of page 17 is attached), Judge Isgur outlined a three tier analysis of whether a bankruptcy case was filed in good faith.

Carvana, LLC submits that insofar as its claim is concerned, the Court should focus on the "other factors" described by Judge Isgur. In particular, the fact that the DEBTORS have only made 3 payments to Carvana, LLC weighs heavily against an assertion that DEBTORS is acting in good faith. "If the debt arises from questionable conduct by the debtor, the Court is less likely to characterize the debtor's relationship with the creditor (and thus the filing of the case) as one of good faith. In Re Charles at page 18.

WHEREFORE, PREMISES CONSIDERED, Carvana, LLC prays that this Court deny Debtors' Motion to Extend the Automatic Stay with respect to Carvana, LLC's debt. In the event this Court extends the Automatic Stay as to Carvana, LLC, Carvana, LLC requests that this Court impose strict conditions upon the continuation of the Automatic stay including, but not limited to "In Rem" relief should the case be dismissed for any reason and subsequently refiled. Carvana, LLC prays for such other and further relief to which it may show itself justly entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing response was served on the parties listed below electronically or by first class mail on this 16th day of October 2018:

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